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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/924,110 | 08/07/2001 | Kevin C. Carter | 195/13921US03 | 9738 |

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EXAMINER

STEWART, ALVIN J

ART UNIT PAPER NUMBER

3738

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,110

Applicant(s)

CARTER ET AL.

Examiner

Alvin J. Stewart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,8,9 and 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,9 and 31-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a

DETAILED ACTION

Response to Amendment

Claims 3, 5-7 and 10-30 are canceled

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4, 8, 9 and 31-40 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 8, 9 and 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al US Patent 5,067,962 in view of McGuire US Patent 5,562,669.

Campbell et al discloses a bone tendon bone graft comprising two bone plugs (23 & 24) connected by a tendon (16). The bone plugs are shaped in a dowel (see Fig. 3), comprise exterior, interior surfaces, having a groove (25 & 26). Finally, the bone plugs are made of xenograft material (see abstract).

Campbell et al discloses the invention substantially as claimed. However, Campbell et al does not disclose a groove along its length.

McGuire discloses first and second bones having a plurality of longitudinal grooves and connected to each other by a graft ligament. Additionally, McGuire is capable of being pulled through a bone tunnel, can be utilized bi-directionally and the bone block is a cylindrical dowel.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a longitudinal groove along the length of the bone blocks in order to insert an interference screw and connect the graft to the patient.

Regarding claim 9, the threads can be done by the insertion of the interference screw.

Regarding claim 31, McGuire discloses bone blocks capable of been utilized bi-directionally (see Figs. 1, 4a and 4b).

Regarding claims 34 and 37, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the shape of the Campbell et al reference by having a cylindrical shape or square cross section because Applicant has not disclosed that the cylindrical shape provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with taper shape of the Campbell et al reference because it will perform equally the same.

Therefore, it would have been an obvious matter of design choice to modify Campbell et al reference to obtain the invention as specified in claim 34.

Regarding claim 35, Campbell et al disclose the claimed invention except for a cylindrical dowel diameter of 9 through 12mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the diameter of the Campbell et al reference with the optimum value of 9 through 12mm, since it has been held that finding an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A Stewart
ALVIN J. STEWART
PRIMARY EXAMINER
Art Unit 3738

October 1, 2005.